

Russell S. Thompson, IV (029098)
Joseph Panvini (028359)
Thompson Consumer Law Group, PLLC
5235 E. Southern Ave., D106-618
Mesa, AZ 85206
Telephone: (602) 388-8898
Facsimile: (866) 317-2674
rthompson@ThompsonConsumerLaw.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ariana Caparelli, *on behalf of herself and* Case No.
all others similarly situated,)

Plaintiff,)

vs.)

Alan H. Zimmerman, P.C. and U.S.)
Collections West, Inc.,)

Defendants.)

**COMPLAINT AND TRIAL BY JURY
DEMAND**

NATURE OF ACTION

1. Plaintiff Ariana Caparelli (“Plaintiff”) brings this putative class action against Defendant Alan H. Zimmerman, P.C. (“Zimmerman”) and U.S. Collections West, Inc. (“USCW”) (collectively “Defendants”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, individually and on behalf of herself and all others similarly situated.

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

1 3. Plaintiff has Article III standing to bring this action, as she seeks to redress
2 conduct by Defendant that caused Plaintiff to suffer intangible harms, which Congress
3 has made legally cognizable in passing the FDCPA. *See Spokeo, Inc. v. Robins*, 136 S.
4 Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016) (Congress is “well
5 positioned to identify intangible harms that meet minimum Article III requirements,” and
6 thus “may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries
7 that were previously inadequate in law.’” (quoting *Lujan v. Defs of Wildlife*, 504 U.S.
8 555, 578 (1992)); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL
9 3671467, at *3 (N.D. Ill. July 11, 2016) (“Without the protections of the FDCPA,
10 Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are
11 inadequate to protect consumers.’” (quoting 15 U.S.C. § 1692(b)).
12

13 4. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
14 the acts and transactions giving rise to Plaintiff’s action occurred in this district, where
15 Plaintiff reside in this district, and where Defendant transacts business in this district.
16

17 **THE FAIR DEBT COLLECTION PRACTICES ACT**

18 5. Congress enacted the FDCPA in order to eliminate “abusive debt collection
19 practices by debt collectors [and] to insure that those debt collectors who refrain from
20 using abusive debt collection practices are not competitively disadvantaged.” *Clark v.*
21 *Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing
22 15 U.S.C. § 1692(e)).
23
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1 6. To protect consumers and ensure compliance by debt collectors, “the
2 FDCPA is a strict liability statute.” *McCollough v. Johnson, Rodenburg & Lauinger,*
3 *LLC*, 637 F.3d 939, 948 (9th Cir. 2011).

4
5 7. Strict liability enhances “the remedial nature of the statute,” and courts are
6 “to interpret it liberally” to protect consumers. *Clark*, 460 F.3d at 1176.

7
8 8. In addition, by making available to prevailing consumers both statutory
9 damages and attorneys’ fees, Congress “clearly intended that private enforcement actions
10 would be the primary enforcement tool of the Act.” *Baker v. G.C. Servs. Corp.*, 677 F.2d
11 775, 780-81 (9th Cir. 1982); *see also Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d
12 1109, 1118 (9th Cir. 2014).

13
14 9. Violations of the FDCPA are assessed under the least sophisticated
15 consumer standard which is “‘designed to protect consumers of below average
16 sophistication or intelligence,’ or those who are ‘uninformed or naïve,’ particularly when
17 those individuals are targeted by debt collectors.” *Gonzales v. Arrow Fin. Servs., LLC*,
18 660 F.3d 1055, 1061 (9th Cir. 2011) (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75
19 (8th Cir. 2000)).

20
21
22 10. “An FDCPA Plaintiff need not even have actually been misled or deceived
23 by the debt collector’s representation; instead, liability depends on whether the
24 *hypothetical* ‘least sophisticated debtor’ likely would be misled.” *Tourgeman*, 755 F.3d
25 at 1117-18 (emphasis in original).

26
27 11. “[B]ecause the FDCPA is a remedial statute aimed at curbing what
28 Congress considered to be an industry-wide pattern of and propensity towards abusing

debtors, it is logical for debt collectors—repeat players likely to be acquainted with the legal standards governing their industry—to bear the brunt of the risk.” *Clark*, 460 F.3d at 1171-72; *see also FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 393 (1965) (“[I]t does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.”) (internal quotations omitted).

PARTIES

12. Plaintiff is a natural person who at all relevant times resided in the State of Arizona, County of Maricopa, and City of Scottsdale.

13. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

14. Zimmerman is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

15. Zimmerman is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

16. USCW is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

17. USCW is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

18. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendants.

1 19. Plaintiff's alleged obligation arises from a transaction in which the money,
2 property, insurance, or services that are the subject of the transaction were incurred
3 primarily for personal, family, or household purposes—namely, a residential apartment
4 lease (the "Debt").
5

6 20. Zimmerman uses instrumentalities of interstate commerce or the mails in a
7 business the principal purpose of which is the collection of any debts.
8

9 21. Zimmerman regularly collects or attempts to collect, directly or indirectly,
10 debts owed or due, or asserted to be owed or due, another.
11

12 22. USCW uses instrumentalities of interstate commerce or the mails in a
13 business the principal purpose of which is the collection of any debts.

14 23. USCW regularly collects or attempts to collect, directly or indirectly, debts
15 owed or due, or asserted to be owed or due, another.
16

17 24. In connection with the collection of the Debt, Zimmerman, itself and on
18 behalf of USCW, sent Plaintiff a letter dated March 27, 2018.

19 25. A true and accurate copy of the March 27, 2018 letter is attached as Exhibit
20 A.
21

22 26. The March 27, 2018 letter was Zimmerman's initial communication with
23 Plaintiff with respect to the Debt.
24

25 27. Zimmerman's March 27, 2018 letter purported to contain the notices
26 required in an initial communication by 15 U.S.C. § 1692g(a).

27 28. However, the letter does not clearly identify the creditor to whom the Debt
28 is currently owed.

1 29. The caption of the letter states: “Balance owed to U.S. Collections West,
2 Inc. for debt incurred with Casa Santa Fe Apartments.” Exhibit A.

3
4 30. This ambiguous statement leaves the consumer guessing whether the
5 original creditor, Casa Santa Fe Apartments, was still the current creditor, or whether the
6 Debt had been transferred to U.S. Collections West, Inc.

7
8 31. This statement implies that USCW was the current creditor.

9 32. Upon information and belief, USCW was not the current creditor.

10 33. Upon information and belief, Casa Santa Fe Apartments was the current
11 creditor.

12
13 34. Because the letter does not meaningfully convey the identity of the current
14 creditor to whom the Debt is owed, it violates 15 U.S.C. § 1692g(a)(2).

15 35. Because the letter is open to more than one reasonable interpretation, at
16 least one of which is inaccurate, it is deceptive as a matter of law.

17
18 **CLASS ALLEGATIONS**

19 36. Plaintiff repeats and re-alleges all factual allegations above.

20
21 37. Zimmerman’s March 27, 2018 letter is based on a form or template used to
22 send collection letters (the “Template”) where the letter states: “Balance owed to U.S.
23 Collections West, Inc. for debt incurred with [creditor].”

24
25 38. Zimmerman has used the Template to send collection letters to over 40
26 individuals in the State of Arizona within the year prior to the filing of the original
27 complaint in this matter.
28

1 39. Plaintiff brings this action on behalf of herself and all others similarly
2 situated. Specifically, Plaintiff seeks to represent the following class of individuals:

3
4 All persons with an Arizona address, to whom Zimmerman mailed a letter,
5 itself and on behalf of USCW, based on the Template within one year
6 before the date of this complaint.

7 40. The class is averred to be so numerous that joinder of members is
8 impracticable.

9 41. The exact number of class members is unknown to Plaintiff at this time and
10 can be ascertained only through appropriate discovery.

11 42. The class is ascertainable in that the names and addresses of all class
12 members can be identified in business records maintained by Defendants.

13 43. There exists a well-defined community of interest in the questions of law
14 and fact involved that affect the parties to be represented. These common questions of
15 law and fact predominate over questions that may affect individual class members. Such
16 issues include, but are not limited to: (a) the existence of Defendants' identical conduct
17 particular to the matters at issue; (b) Defendants' violations of the FDCPA; (c) the
18 availability of statutory penalties; and (d) attorneys' fees and costs.

19 44. Plaintiff's claims are typical of those of the class she seeks to represent.

20 45. The claims of Plaintiff and of the class originate from the same conduct,
21 practice, and procedure on the part of Defendants. Thus, if brought and prosecuted
22 individually, the claims of the members of the class would require proof of the same
23 material and substantive facts.
24
25
26
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28

1 46. Plaintiff possesses the same interests and has suffered the same injuries as
2 each class member. Plaintiff asserts identical claims and seeks identical relief on behalf
3 of the unnamed class members.
4

5 47. Plaintiff will fairly and adequately protect the interests of the class and has
6 no interests adverse to or which directly and irrevocably conflict with the interests of
7 other members of the class.
8

9 48. Plaintiff is willing and prepared to serve this Court and the proposed class.

10 49. The interests of Plaintiff are co-extensive with and not antagonistic to those
11 of the absent class members.
12

13 50. Plaintiff has retained the services of counsel who are experienced in
14 consumer protection claims, as well as complex class action litigation, will adequately
15 prosecute this action, and will assert, protect and otherwise represent Plaintiff and all
16 absent class members.
17

18 51. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and
19 23(b)(1)(B). The prosecution of separate actions by individual members of the class
20 would, as a practical matter, be dispositive of the interests of other members of the class
21 who are not parties to the action or could substantially impair or impede their ability to
22 protect their interests.
23

24 52. The prosecution of separate actions by individual members of the class
25 would create a risk of inconsistent or varying adjudications with respect to individual
26 members of the class, which would establish incompatible standards of conduct for the
27 parties opposing the class. Such incompatible standards of conduct and varying
28

1 adjudications, on what would necessarily be the same essential facts, proof and legal
2 theories, would also create and allow the existence of inconsistent and incompatible
3 rights within the class.
4

5 53. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
6 Defendants acted or refused to act on grounds generally applicable to the class, making
7 final declaratory or injunctive relief appropriate.
8

9 54. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the
10 questions of law and fact that are common to members of the class predominate over any
11 questions affecting only individual members.
12

13 55. Moreover, a class action is superior to other methods for the fair and
14 efficient adjudication of the controversies raised in this Complaint in that: (a) individual
15 claims by the class members will be impracticable as the costs of pursuit would far
16 exceed what any one plaintiff or class member has at stake; (b) as a result, very little
17 litigation has commenced over the controversies alleged in this Complaint and individual
18 members are unlikely to have an interest in prosecuting and controlling separate
19 individual actions; and (c) the concentration of litigation of these claims in one forum
20 will achieve efficiency and promote judicial economy.
21
22

23 **COUNT I**
24 **VIOLATION OF 15 U.S.C. § 1692g(a)(2)**

25 56. Plaintiff repeats and re-alleges each factual allegation above.
26

27 57. A key provision of the FDCPA is § 1692g, which requires a debt collector
28 to send, within five days of its initial communication with a consumer, a written notice

1 which provides information regarding the debt and informs the consumer of his or her
2 right to dispute the validity of the debt, and/or request the name and address of the
3 original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

4
5 58. Congress adopted “the debt validation provisions of section 1692g” to
6 guarantee that consumers would receive “adequate notice” of their rights under the
7 FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v.*
8 *Payco–General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

9
10 59. This validation requirement is a “significant feature” of the law that aimed
11 to “eliminate the recurring problem of debt collectors dunning the wrong person or
12 attempting to collect debts which the consumer has already paid.” *See Hernandez v.*
13 *Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No.
14 95-382, at 4 (1977)).

15
16
17 60. “To satisfy section 1692g’s requirements, the notice Congress required
18 must be conveyed effectively to the debtor.” *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9th
19 Cir. 1997) (quoting *Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1227
20 (9th Cir. 1988)) (internal citations omitted); *see also Janetos v. Fulton Friedman &*
21 *Gullace, LLP*, 825 F.3d 317, 321 (7th Cir. 2016) (“When § 1692g(a) requires that a
22 communication include certain information, compliance demands more than simply
23 including that information in some unintelligible form.”).

24
25
26 61. “Viewed from the perspective of the least sophisticated consumer, the
27 Validation Notice must effectively convey the identity of the creditor.” *Youssofi v.*
28 *CMRE Fin. Servs., Inc.*, No. 15CV2310 JM(WVG), 2016 WL 4098312, at *3 (S.D. Cal.

1 Aug. 2, 2016); *see also Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F.2d 1222,
 2 1225 (9th Cir. 1988).

3
 4 62. “Merely including the current creditor’s name in a debt collection letter,
 5 without more, is insufficient to satisfy 15 U.S.C. § 1692g(a)(2).” *McGinty v. Prof’l*
 6 *Claims Bureau, Inc.*, No. 15CV4356SJFARL, 2016 WL 6069180, at *4 (E.D.N.Y. Oct.
 7 17, 2016); *see Datiz v. Int’l Recovery Assocs., Inc.*, No. 15-CV-3549, 2016 WL 4148330,
 8 at *11 (E.D.N.Y. Aug. 4, 2016) (“[A] debt collector cannot satisfy Section 1692g(a)(2)
 9 by naming an entity without explicitly or implicitly making clear in the letter that the
 10 entity is the debtor's current creditor to whom a debt is owed.”).

11
 12 63. Zimmerman violated 15 U.S.C. § 1692g(a)(2) by failing to meaningfully
 13 convey to Plaintiff the name of the creditor to whom the alleged debt is owed.
 14

15 64. USCW, by virtue of its status as a “debt collector” under the FDCPA, is
 16 liable for the conduct of Zimmerman—the debt collector it retained to collect on its
 17 behalf.
 18

19 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
 20

- 21 a) Determining that this action is a proper class action, certifying Plaintiff as a
 22 class representative under Rule 23 of the Federal Rules of Civil Procedure,
 23 and designating this Complaint the operable complaint for class purposes;
 24
 25 b) Adjudging that Defendants violated 15 U.S.C. § 1692g(a)(2) with respect to
 26 Plaintiff and the class she seeks to represent;
 27
 28 c) Awarding Plaintiff, and the class she seeks to represent, actual damages,
 pursuant to 15 U.S.C. § 1692k(a)(1);

- 1 d) Awarding Plaintiff such additional damages as the Court may allow in the
 2 amount of \$1,000 per Defendant, pursuant to 15 U.S.C. §
 3 1692k(a)(2)(B)(i);
 4
 5 e) Awarding such amount as the Court may allow for all other class members,
 6 without regard to a minimum individual recovery, in the amount of
 7 \$500,000 or one percent of the net worth of each Defendant, pursuant to 15
 8 U.S.C. § 1692k(a)(2)(B)(ii);
 9
 10 f) Awarding Plaintiff, and the class she seeks to represent, reasonable
 11 attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. §
 12 1692k(a)(3);
 13
 14 g) Awarding Plaintiff, and the class she seeks to represent pre-judgment and
 15 post-judgment interest as permissible by law; and
 16
 17 h) Awarding such other and further relief as the Court may deem proper.

18 **COUNT II**
 19 **VIOLATION OF 15 U.S.C. § 1692e**

20 65. Plaintiff repeats and re-alleges each factual allegation above.

21 66. The FDCPA creates a broad, flexible prohibition against the use of
 22 misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. §
 23 1692e; *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir.
 24 2002) (citing legislative history reference to the FDCPA's general prohibitions which
 25 "will enable the courts, where appropriate, to proscribe other improper conduct which is
 26 not specifically addressed").
 27
 28

1 67. “[I]t is well established that ‘[a] debt collection letter is deceptive where it
2 can be reasonably read to have two or more different meanings, one of which is
3 inaccurate.’” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011)
4 (quoting *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 455 (3d Cir. 2006)).
5

6 68. Zimmerman violated 15 U.S.C. § 1692e by falsely representing or
7 misleading Plaintiff as to the identity of the creditor of her alleged Debt.
8

9 69. USCW, by virtue of its status as a “debt collector” under the FDCPA, is
10 liable for the conduct of Zimmerman—the debt collector it retained to collect on its
11 behalf.
12

13 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 14 a) Determining that this action is a proper class action, certifying Plaintiff as a
15 class representative under Rule 23 of the Federal Rules of Civil Procedure,
16 and designating this Complaint the operable complaint for class purposes;
17
18 b) Adjudging that Defendants violated 15 U.S.C. § 1692e with respect to
19 Plaintiff and the class she seeks to represent;
20
21 c) Awarding Plaintiff, and the class she seeks to represent, actual damages,
22 pursuant to 15 U.S.C. § 1692k(a)(1);
23
24 d) Awarding Plaintiff such additional damages as the Court may allow in the
25 amount of \$1,000 per Defendant, pursuant to 15 U.S.C. §
26 1692k(a)(2)(B)(i);
27
28 e) Awarding such amount as the Court may allow for all other class members,
without regard to a minimum individual recovery, in the amount of

1 \$500,000 or one percent of the net worth of each Defendant, pursuant to 15
2 U.S.C. § 1692k(a)(2)(B)(ii);

3
4 f) Awarding Plaintiff, and the class she seeks to represent, reasonable
5 attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. §
6 1692k(a)(3);

7
8 g) Awarding Plaintiff, and the class she seeks to represent pre-judgment and
9 post-judgment interest as permissible by law; and

10 h) Awarding such other and further relief as the Court may deem proper.

11
12 **TRIAL BY JURY**

13 70. Plaintiff is entitled to and hereby demands a trial by jury.

14 Dated: July 19, 2018

15 Respectfully submitted,

16 s/ Russell S. Thompson, IV

17 Russell S. Thompson, IV (029098)

18 Thompson Consumer Law Group, PLLC

19 5235 E. Southern Ave., D106-618

20 Mesa, AZ 85206

21 Telephone: (602) 388-8898

22 Facsimile: (866) 317-2674

23 rthompson@ThompsonConsumerLaw.com

24 s/ Joseph Panvini

25 Joseph Panvini (028359)

26 Thompson Consumer Law Group, PLLC

27 5235 E. Southern Ave., D106-618

28 Mesa, AZ 85206

Telephone: (602) 388-8875

Facsimile: (866) 317-2674

jpanvini@ThompsonConsumerLaw.com

Attorneys for Plaintiff